

Administrative Manual	Section: General Administrative Procedures and Compliance
Policy Manual Number: 200.005	Chapter: Confidentiality & Privacy

## **CONFIDENTIALITY & PRIVACY**

**Legal Authority:** 42 CFR 431.300; 42 CFR 431.305; 45 CFR 160-164

### **1. Policy Statement**

Federal and state law provides safeguards that restrict the use or disclosure of information concerning the individual to purposes directly connected with the administration of the Medicaid program. Such purposes include establishing eligibility, determining the amount of medical assistance, providing services to the individual and conducting or assisting in an investigation or prosecution of administrative, civil or criminal proceedings related to program administration.

### **2. The Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act**

HIPAA and HITECH require TennCare to protect the privacy and security of any protected health information (PHI) received, used, stored and created in the course of business. PHI is any information about a past, present or future physical or medical condition, provision of health care or payment for health care that can be linked to a specific individual. This includes, but is not limited to, any part of a patient's medical record or payment history. HIPAA privacy rules give patients privacy rights regarding access to and use of their medical records in all forms, including electronic and paper records, and oral communications.

Privacy protections apply to all requests for information from outside sources, including governmental bodies and the courts, as well as law enforcement officials. Information subject to privacy protections includes but is not limited to:

- i. The individual's name, date of birth, and address;
- ii. Unique identifiers such as Social Security or medical records numbers;
- iii. Agency evaluation of personal information;
- iv. Social and economic conditions or circumstances;
- v. Medical services provided;
- vi. Medical information including past history of disease or disability, current diagnosis, and future planned or needed care;
- vii. Any information received for the purpose of verifying income eligibility and amount of medical assistance payments. Income information received from the Social Security Administration (SSA) or Internal Revenue Services (IRS) must be safeguarded according to the requirements of the agency that furnished the data; and
- viii. Any information received in connection with the identification of legally liable third party resources.

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### **3. Requests for Information by Outside Parties Regarding Eligibility of Clients and Related Medical Information**

Federal and state statutes restrict the provision of information about an individual to outside parties. This includes PHI as well as the individual's eligibility status, and medical, financial and other information used to determine eligibility for TennCare Medicaid. When TennCare employees or TennCare contractors are contacted by outside parties, including family members, family friends and attorneys or their staff, who represent an individual receiving TennCare Medicaid, TennCare employees and contractors must adhere to the following policies and procedures:

**a. When contacted by an attorney, or someone from the attorney's office such as a paralegal or member of the clerical staff, about the status of a particular enrollee:**

- i. Inform the person that TennCare requires appropriate authorized representative documentation and that it is TennCare policy to refer attorney inquiries about an individual's TennCare Medicaid case to the TennCare Office of General Counsel (OGC), Privacy Office when needed.
- ii. Take the person's name, number and relevant inquiry details, and tell the person that someone from the Privacy Office will contact him or her.
- iii. Immediately send the individual's contact information to [Privacy.TennCare@tn.gov](mailto:Privacy.TennCare@tn.gov)
- iv. Call the Privacy Office at 615-507-6855 or 615-507-6820 to confirm receipt of the information. Do not discuss the individual's case with the requesting party or provide the person with any information (written or otherwise) about the individual's case unless otherwise notified by OGC staff.

**b. Contact by any other third party (including a person who claims to be a relative or friend of the individual):**

- i. Inform the requesting party that federal law prohibits discussion of the individual's case with a third party unless there is written consent from the individual, or unless the individual is present and provides verbal consent to the discussion.
- ii. To authorize individuals or organizations to receive healthcare information and make decisions on behalf of an applicant/enrollee, the applicant/enrollee may verbally designate a representative or submit a Tennessee Health Care Finance and Administration Authorization form, or otherwise provide appropriate documentation (e.g. power of attorney, custody/guardianship order) when an authorized representative is not designated on the application.

The Authorized Representative forms are available at: [Authorization of Representative - Individual](#) and [Authorization of Representative - Organization](#).

There are separate forms for entities and individuals being designated as representatives, and the correct one must be submitted in each case. Once an individual is verbally designated as a representative or appropriate document or

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completed form is received, discuss the individual's TennCare Medicaid only with the person(s) being authorized to receive the information.

To authorize individuals or organizations to receive healthcare information, but not make decisions on behalf of an applicant/enrollee, a Permission to Release Protected Health Information form is required when it is not designated on the application. Offer to mail or fax the requesting party or individual a blank form that the individual can complete, execute and mail or fax to Tennessee Health Connection (TNHC). The form is available at: <https://www.tn.gov/content/dam/tn/tenncare/documents/releaserecord.pdf>

Once the completed form is received, discuss the individual's TennCare Medicaid only with the person(s) listed on the form as being authorized to receive the information.

If TennCare receives a signed authorization form that is different from the form provided, forward the form to the TennCare OGC, Privacy Office for approval at [Privacy.TennCare@tn.gov](mailto:Privacy.TennCare@tn.gov) or via fax to 615-734-5289. In order to be valid, the authorization form must be completely filled out. The authorization form must also contain an expiration date. Always check the expiration date on the form to ensure that the authorization has not expired.

If approval is not provided by the Privacy Office, the authorization form will not be considered acceptable to authorize the individual to represent the applicant/enrollee.

#### 4. Application by Department Employees and their Relatives

A TennCare employee must notify his supervisor as soon as practicable if and when the employee, the employee's family member or person with whom the employee maintains a close personal relationship applies for benefits.

##### a. Definitions

**Family Member:** A family member is defined as one of the following

- i. Relationships by blood: parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, first cousin; and
- ii. Relationships by marriage: husband, wife, step-parent, stepchild, brother-in-law, sister-in-law, father-in-law, mother-in-law, son-in-law, daughter-in-law, half-brother, half-sister, uncle, aunt, nephew, niece, spouse of any of the above.

**Close Personal Relationship:** A close personal relationship is one defined as but not limited to:

- i. A dating or co-habiting relationship;
- ii. A domestic partnership;

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- iii. A relationship in which business transactions are regularly conducted; and
- iv. A personal friendship that transcends a casual acquaintance, such as:
  - a. A person whose home is frequently visited by the employee, or vice versa; and
  - b. A person with whom the employee socializes on a regular basis.

## **5. Social Media Relationship**

A TennCare employee shall disclose to the employee's supervisor if and when the employee becomes aware of a person with whom the employee maintains a social media relationship has applied for benefits. The TennCare employee shall not be involved in or access records related to an individual with whom the employee maintains a social media relationship.

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